Doc ID: 000899740013 Type: CRP
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Fee Amt: $223.00 Page 1 of 13
Excise Tax: $173.00
Pitt County, NC
Judy J. Tart Register of Deeds
BK 2234 PG 292-304

File

Prepared by and ~~return~~ to:
Lee Lewis Leidy, Attorney
North Carolina Coastal Land Trust
701 W. Ocean Acres Drive
Kill Devil Hills, N. C. 27948

RETURN TO:
Ward and Smith, P.A.
P.O. Box 8088
Greenville, NC
27835-8088

CONSERVATION EASEMENT

STATE OF NORTH CAROLINA
PITT COUNTY

SPO File Number: 74-AAAW

PIN: 24136, 01313, 24137, 51850 and 25572

THIS CONSERVATION EASEMENT, made this 13th day of December, 2006, by **WALTER J. PORIES and wife, MARY ANN ROSE**, of 7464 N.C. Highway 43 North, Macclesfield, NC 27852, **and FRANCESCA, LLC.**, a North Carolina Limited Liability Company, of 7464 N.C. Highway 43 North, Macclesfield, NC 27852 (collectively referred to as "Grantor") to **NORTH CAROLINA COASTAL LAND TRUST,** a nonprofit North Carolina corporation, of 131 Racine Drive, Suite 101, Wilmington, NC 28403, ("**Grantee**"). The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February, 2000; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Falkland Township, Pitt County, North Carolina, containing 37.463 acres along the Tar River, as more particularly delineated on Sheet 1 of 2 of that certain plat entitled in part, "Conservation Easement Survey for North Carolina Coastal Land Trust of the Walter J. Pories Site, Falkland Township, Pitt County, NC," prepared by John C. Nix, Professional Land Surveyor, and dated, December 5, 2005, and as more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter, the "Property").

WHEREAS, Grantor is willing to grant a Conservation Easement over the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement, with the intent of thereafter transferring the Conservation Easement to the State of North Carolina. This Conservation Easement shall be to protect and benefit of the waters of the Tar River.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement over certain real property situated, lying, and being in Falkland Township, Pitt County, North Carolina, containing 37.463 acres along the Tar River, as more particularly delineated on Sheet 1 of 2 of that certain plat entitled in part, "Conservation Easement Survey for North

Carolina Coastal Land Trust of the Walter J. Pories Site, Falkland Township, Pitt County, NC," prepared by John C. Nix, Professional Land Surveyor, and dated, December 5, 2005, and as more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "**Easement Area**" or "**Property**"), of the nature and character and to the extent hereinafter set forth for the benefit of the people of North Carolina. The Conservation Easement over the Property is conveyed together with a 20 foot easement for access, ingress, egress and regress to and from said Property and N. C. Highway No. 43, all as more particularly delineated on Sheet 2 of 2 of that certain plat entitled in part, "Conservation Easement Survey for North Carolina Coastal Land Trust of the Walter J. Pories Site Falkland Township Pitt County, NC," dated December 5, 2005, prepared by John C. Nix, Professional Land Surveyor, bearing Project No: 20050147, which plat is recorded in Plat Cabinet 67, Slide 7, Pitt County Registry, reference to which is made for a more complete and accurate description of the easement herein conveyed for access, ingress, egress and regress to and from the Property subject to this Conservation Easement.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. GRANTOR'S RESERVED USES AND RESTRICTED ACTIVITES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor inconsistent with the purposes of this Conservation Easement is prohibited. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. Recreational Uses. Grantor expressly reserves the right to use the Easement Area for undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and such authorized usage must be on trails, paths or roads existing as of the date of this Conservation Easement.

B. Educational Uses. The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized

educational activities, including, but not limited to, site visits and observations. Such educational uses of the property shall not alter vegetation, hydrology or topography of the site.

C. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased, or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

D. **Industrial, Residential and Commercial Uses.** All industrial, residential and commercial uses of any kind and nature whatsoever are prohibited in the Easement Area.

E. **Agricultural Use.** All agricultural uses within the Easement Area including, but not limited to, any use for cropland, waste lagoons, or pastureland are prohibited.

F. **New Construction.** Except as expressly provided herein, there shall be no building, facility, mobile home, pier, dock, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area. Temporary deer stands may be placed in the Easement Area if they are attached to trees in a manner that will not damage the trees.

G. **Roads and Trails.** There shall be no new construction of roads, trails, walkways, or paving in the Easement Area. Roads or trails located in the Easement Area existing as of the date of this Conservation Easement may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces. Existing road culverts may be maintained or replaced. Best management practices and silt fences will be used during any maintenance or replacement activities.

H. **Signs.** No signs shall be permitted in the Easement Area except that interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area may be allowed.

I. **Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps,

or wetlands, or use of pesticides or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. Subdivision and Conveyance. No further subdivision, partitioning, or dividing of the Easement Area is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the Easement Area and the rights as conveyed herein shall be as a single block or tract of property. Any future conveyance of the remaining fee simple rights shall be subject to this Conservation Easement. Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof, such transfer is subject to the Grantee's right of ingress, egress, and regress over and across the Property to the Easement Area for the purposes set forth herein.

M. Development Rights. All development within the Easement Area is prohibited and, therefore, there are no development rights remaining with respect to the Easement Area and no such rights shall be transferred.

N. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor or Grantors heirs, successors or assigns, is prohibited.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement; except, however, the Grantor shall not vary from the restrictions contained in this Conservation Easement without obtaining the prior written consent of the Grantee, whose mailing address is 131 Racine Drive, Suite 101, Wilmington, NC 28403, and the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. Ingress, Egress, Regress and Inspection. The Grantee, its employees and agents, successors and assigns, shall have the perpetual right of general access, ingress, egress, and regress to the Easement Area over the Property at reasonable times to fulfill its duties and obligations created under this Conservation Easement, including, but not limited to, undertaking any activities to monitor and, if necessary, to restore, manage, maintain, and enhance the wetland and riparian resources of the Easement Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. Restoration Activities. The Grantee, its employees and agents, successors and assigns, shall have the perpetual right to conduct or undertake restoration activities on the Property, which activities include, but shall not be limited to, the planting of trees, shrubs and herbaceous vegetation, installing monitoring wells, utilizing heavy equipment to grade, fill, and prepare the soil, modifying the hydrology of the site, and installing natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow. Any such

restoration activities conducted by or at the direction of the Grantee, its employees and agents, successors and assigns shall be conducted in accordance with the provisions of that correspondence from Suzanne Klimek, Director of Operations, North Carolina Ecosystem Enhancement Program, to the Grantor dated September 26, 2006, which correspondence is attached hereto as Exhibit B and incorporated herein by reference.

IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee, its employees and agents, successors and assigns, have the right to enter the Easement Area over the Property at reasonable times for the purposes of fulfilling its obligations and duties under this Conservation Easement and inspecting to determine whether the Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, their successors or assigns, for any injury or change in the Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, including, without limitation, any costs of restoration necessitated by

Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

E. No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

V. MISCELLANEOUS

A. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

B. Any notices required herein shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

C. Grantor shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

F. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VI. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of

the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

TO HAVE AND TO HOLD the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

AND Grantee has joined in the execution of this Conservation Easement in its corporate name, by authority of its Board of Directors, to indicate its consent to the terms of this Conservation Easement and its acceptance of this Conservation Easement.

IN TESTIMONY WHEREOF, the Grantor and Grantee have hereunto set their hands and seals, or, if corporate, have caused this instrument to be signed in its corporate name, by authority of its Board of Directors, the day and year first above written.

GRANTOR:

Walter Pories (SEAL)
WALTER J. PORIES

Mary Ann Rose (SEAL)
MARY ANN ROSE

Jamie W. Woolard
Notary Public
Beaufort County, NC

NORTH CAROLINA
COUNTY OF Pitt

I, Jamie W. Woolard, a Notary Public in and for the County and State aforesaid, do hereby certify that Walter J. Pories and wife, Mary Ann Rose, Grantors, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 13th day of December, 2006.

Jamie W. Woolard
Notary Public

My commission expires:
4/10/2008

AFFIX NOTARY SEAL

Jamie W. Woolard
Notary Public
Beaufort County, NC

FRANCESCA, LLC, **(SEAL)**
a North Carolina Limited Liability Company

BY: _____ **(SEAL)**
WALTER J. PORIES, MANAGER

NORTH CAROLINA
COUNTY OF Pitt

I, Jamie W. Woolard, a Notary Public in and for the County and State aforesaid, do hereby certify that Walter J. Pories, Manager of Francesca, LLC, a North Carolina Limited Liability Company, a Grantor herein, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 13th day of December, 2006.

Notary Public

AFFIX NOTARY SEAL

My commission expires:
4/10/2008

Jamie W. Woolard
Notary Public
Beaufort County, NC

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GRANTEE:

NORTH CAROLINA COASTAL LAND TRUST

BY: _____
MICHAEL MURCHISON, VICE-PRESIDENT

Attest:
_____
CAMILLA M. HERLEVICH, ASSISTANT SECRETARY

CORPORATE SEAL

NORTH CAROLINA
COUNTY OF Pender

I, Carol P. Atkinson, a Notary Public in and for the County and State aforesaid, do hereby certify that Camilla M. Herlevich, personally appeared before me this day and acknowledged that she is the Assistant Secretary of North Carolina Coastal Land Trust, a North Carolina corporation, and that by the authority duly given as the act and deed of the corporation, the foregoing instrument was signed in its name by its Vice-President, and attested by its Assistant Secretary.

Witness my hand and official stamp or seal, this the 22nd day of November, 2006.

_____
Notary Public

AFFIX NOTARY SEAL

My commission expires:
1/27/09

OFFICIAL SEAL
NORTH CAROLINA - PENDER COUNTY
CAROL P. ATKINSON
NOTARY PUBLIC
My Commission Expires 1-27-2009.

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EXHIBIT A

All that certain tract or parcel of land situated in Falkland Township, Pitt County, North Carolina, containing 37.463 acres along the Tar River, as more particularly delineated on Sheet 1 of 2 of that certain plat entitled in part, "Conservation Easement Survey for North Carolina Coastal Land Trust of the Walter J. Pories Site Falkland Township Pitt County, NC," dated December 5, 2005, prepared by John C. Nix, Professional Land Surveyor, bearing Project No: 20050147, which plat is recorded in Plat Cabinet 67, Slide 7, Pitt County Registry, reference to which is made for a more complete and accurate description of the lands herein conveyed to be subject to the Conservation Easement from Walter J. Pories and wife, Mary Ann Rose, to North Carolina Coastal Land Trust.

The Conservation Easement over the property described hereinabove is conveyed together with a 20 foot easement for access, ingress, egress and regress to and from said property and N. C. Highway No. 43, all as more particularly delineated on Sheet 2 of 2 of that certain plat entitled in part, "Conservation Easement Survey for North Carolina Coastal Land Trust of the Walter J. Pories Site Falkland Township Pitt County, NC," dated December 5, 2005, prepared by John C. Nix, Professional Land Surveyor, bearing Project No: 20050147, which plat is recorded in Plat Cabinet 67, Slide 7, Pitt County Registry, reference to which is made for a more complete and accurate description of the easement herein conveyed for access, ingress, egress and regress to and from the aforesaid parcel subject to the Conservation Easement.